

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NICHOLAS SMITH, JR.,

Defendant.

8:09CR64

ORDER

Defendant Nicholas Smith, Jr. appeared before the court on November 26, 2018 on a Petition for Offender Under Supervision [71]. The defendant was represented by Assistant Federal Public Defender Karen M. Shanahan, and the United States was represented by Assistant U.S. Attorney Jody B. Mullis.

Through his counsel, the defendant waived his right to a probable cause hearing on the Petition for Offender Under Supervision [71] pursuant to Fed. R. Crim. P. 32.1(b)(1). I find that the Petition alleges probable cause and that the defendant should be held to answer for a final dispositional hearing before Senior Judge Bataillon.

The government moved for detention. Through counsel, the defendant declined to present any evidence on the issue of detention and otherwise waived a detention hearing. Since it is the defendant's burden under 18 U.S.C. § 3143 to establish by clear and convincing evidence that he is neither a danger to the community nor a flight risk, the court finds the defendant has failed to carry his burden and that he should be detained pending a dispositional hearing before Senior Judge Bataillon.

IT IS ORDERED:

1. A final dispositional hearing will be held before Senior Judge Bataillon in Courtroom No. 3, Third Floor, Roman L. Hruska Federal Courthouse, 111 South 18th Plaza, Omaha, Nebraska, on January 2, 2019 at 2:30 p.m. The defendant must be present in person.

2. The defendant, Nicholas Smith, Jr., is committed to the custody of the Attorney General or his designated representative for confinement in a correctional facility;

3. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel; and

4. Upon order of a United States court or upon request of an attorney for the government, the person in charge of the corrections facility shall deliver defendant to the United States Marshal for the purpose of an appearance in connection with a court proceeding.

Dated this 27th day of November, 2018.

BY THE COURT:

s/ Susan M. Bazis
United States Magistrate Judge